

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Robert P. Goe - State Bar No. 137019 Charity J. Manee – State Bar No. 286481 GOE FORSYTHE & HODGES LLP 18101 Von Karman Avenue, Suite 1200 Irvine, CA 92612 rgoe@goeforlaw.com cmanee@goeforlaw.com  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Meade Instruments Corp.	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b>	
In re:  MEADE INSTRUMENTS CORP., a Delaware corporation,  <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 8:19-bk-14714-MW CHAPTER: 11  <b>NOTICE OF SALE OF ESTATE PROPERTY</b>

<b>Sale Date:</b>	<b>Time:</b>
<b>Location:</b> 18101 Von Karman Avenue, Suite 1200, Irvine, CA 92612	

**Type of Sale:** ☐ Public ☒ Private **Last date to file objections:** 12/26/2020

**Description of property to be sold:**

Debtor's General Unsecured Proof of Claim filed in the Tuesday Morning Corporation's Chapter 11 Bankruptcy filed in the United States Bankruptcy Court for the Northern District of Texas bearing case number 20-31476 in the amount of \$16,451.00

**Terms and conditions of sale:**

Property will be sold "as is" without representations or warranties of any kind, expressed or implied, concerning the condition of the Property, the quality of title thereto, or any other matters relating to the property.

**Proposed sale price:** \$ 13,489.82

**Overbid procedure (*if any*):** NONE

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

NOT APPLICABLE

**Contact person for potential bidders (*include name, address, telephone, fax and/or email address*):**

Sale is not subject to overbid. Debtor will receive \$13,489.82.

Date: 12/14/2020

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
18010 Von Karman Avenue, Suite1200, Irvine, California 92612

A true and correct copy of the foregoing document entitled: **NOTICE OF SALE OF ESTATE PROPERTY** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *(date)* 12/14/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On *(date)* \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** *(state method for each person or entity served)*: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on *(date)* \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/14/2020  
*Date*

Arthur E. Johnston  
*Printed Name*

/s/ Arthur E. Johnston  
*Signature*

In re. Meade Instruments Corp.,

Case No 8:19-bk-14714-MW  
Chapter 11 Case

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1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Attorney for Debtor:

**Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com

Office of the United States Trustee:

**Frank Cadigan** frank.cadigan@usdoj.gov

**United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

Attorneys for Creditors Committee:

**Mark S Horoupian** mhoroupian@sulmeyerlaw.com,  
mhoroupian@ecf.inforuptcy.com; ccaldwell@sulmeyerlaw.com

**Claire K Wu** ckwu@sulmeyerlaw.com,  
mviramontes@sulmeyerlaw.com; ckwu@ecf.courtdrive.com; ckwu@ecf.inforuptcy.com

Attorney for Optronic Technologies, Inc., d/b/a Orion Telescopes and Binoculars:

**Matthew Borden** borden@braunhagey.com,  
rosario@braunhagey.com; kushnir@braunhagey.com; verga@braunhagey.com; hagey@braunhagey.  
com; fisher@braunhagey.com; theodore@braunhagey.com; hasegawa@braunhagey.com; szoke@bra  
unhagey.com; baker@braunhagey.com

**Hamid R Rafatjoo** hrafatjoo@raineslaw.com, bclark@raineslaw.com

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Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Robert P. Goe - State Bar No. 137019 Charity J. Manee – State Bar No. 286481 GOE FORSYTHE & HODGES LLP 18101 Von Karman Avenue, Suite 1200 Irvine, CA 92612 rgoe@goeforlaw.com cmanee@goeforlaw.com  Telephone: (949) 798-2460 Facsimile: (949) 955-9437  <i>Attorney for:</i> Debtor in Possession	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</b>	
In re:  <input checked="" type="checkbox"/> MEADE INSTRUMENTS CORP., a Delaware corporation,  <input type="checkbox"/> SUNNY OPTICS, INC., a Delaware corporation,  <input type="checkbox"/> All Debtors.  Debtors and Debtors-in-Possession.	CASE NO.: 8:19-bk-14714-MW CHAPTER: 11  <b>NOTICE OF OPPORTUNITY TO REQUEST A HEARING ON MOTION</b>  <b>[LBR 9013-1(o)]</b>  [No hearing unless requested in writing]

**TO THE U.S. TRUSTEE AND ALL PARTIES ENTITLED TO NOTICE, PLEASE TAKE NOTICE THAT:**

1. Movant(s) Meade Instruments Corp., a Delaware Corporation, filed a motion or application (Motion) entitled Motion for Order Approving the Sale of its General Unsecured Proof of Claim Number 0000010085 Filed in the Tuesday Morning Corporation's Chapter 11 Bankruptcy to Fair Harbor Capital.
2. Movant(s) is requesting that the court grant the Motion without a hearing as provided for in LBR 9013-1(o), unless a party in interest timely files and serves a written opposition to the Motion and requests a hearing.
3. The Motion is based upon the legal and factual grounds set forth in the Motion. (*Check appropriate box below*):  
The full Motion is attached to this notice; or  
The full Motion was filed with the court as docket entry #\_\_\_\_\_, and a detailed description of the relief sought is attached to this notice.
4. **DEADLINE FOR FILING AND SERVING OPPOSITION PAPERS AND REQUEST FOR A HEARING:** Pursuant to LBR 9013-1(o), any party who opposes the Motion may request a hearing on the Motion. The deadline to file and serve a written opposition and request for a hearing is 14 days after the date of service of this notice, plus 3 additional days if you were served by mail or pursuant to F.R.Civ.P. 5(b)(2)(D) or (F).

- a. If you timely file and serve a written opposition and request for a hearing, movant will file and serve a notice of hearing at least 14 days in advance of the hearing. [LBR 9013-1(o)(4)]
- b. If you fail to comply with this deadline:
  - (1) Movant will file a declaration to indicate: (1) the Motion was properly served, (2) the response period elapsed, and (3) no party filed and served a written opposition and request for a hearing within 14 days after the date of service of the notice [LBR 9013-1(o)(3)];
  - (2) Movant will lodge an order that the court may use to grant the Motion; and
  - (3) The court may treat your failure as a waiver of your right to oppose the Motion and may grant the Motion without further hearing and notice. [LBR 9013-1(h)]

Respectfully submitted,

Date: 12-11-2020

/s/ Robert P. Goe

Signature of Movant or attorney for Movant

Robert P. Goe

Printed name of Movant or attorney for Movant

**In re. Meade Instruments Corp.**

Case No. 8:19-bk-14714-MW  
Jointly administered with  
Case No. 8:19-bk-14711-MW

**Statement of Information in Compliance with LBR 6004-1(c)(3)**

<i>LBR 6004-1(c)(3)(B)</i> The name and address of the proposed buyer	Fair Harbor Capital, LLC Atten.: Fred Glass, Member 130 West 57 <sup>th</sup> Street, 5 <sup>th</sup> Floor New York, NY 10019
<i>LBR 6004-1(c)(3)(C)</i> A description of the property to be sold	Debtor's General Unsecured Proof of Claim filed in the Tuesday Morning Corporation's (" <u>Tuesday Morning</u> ") Chapter 11 Bankruptcy filed in the United States Bankruptcy Court for the Northern District of Texas bearing case number 20-31476 in the amount of \$16,451.0
<i>LBR 6004-1(c)(3)(D)</i> The terms and conditions of the proposed sale, including the price and all contingencies	Price: \$13,489.82  Property will be sold "as is" without representations or warranties of any kind, expressed or implied, concerning the condition of the Property, the quality of title thereto, or any other matters relating to the Property.
<i>LBR 6004-1(c)(3)(E)</i> Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims, or interests	Not applicable.
<i>LBR 6004-1(c)(3)(F)</i> Whether the proposed sale is subject to higher and better bids	The Sale is <u>not</u> subject to overbidding
<i>LBR 6004-1(c)(3)(G)</i> The consideration to be received by the estate, including estimated commissions, fees, and other costs of sale	No commissions, fees or other costs of sale  Debtor will receive \$13,489.82.

<i>LBR 6004-1(c)(3)(H)</i> If authorization is sought to pay a commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid	No commission, no agent or auctioneer.
<i>LBR 6004-1(c)(3)(I)</i> A description of the estimated or possible tax consequences to the estate, if known, and how any tax liability generated by the sale of the property will be paid	The Debtor is not aware of any adverse tax consequences to the estate.
<i>LBR 6004-1(c)(3)(J)</i> The date which an objection must be filed and served	December 26, 2020



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**18101 Von Karman Avenue, Suite 1200, Irvine, California 92612.**

A true and correct copy of the foregoing document entitled (*specify*): **Notice of Opportunity to Request a Hearing on Motion [LBR 9013-1(o)] and Meade Instruments Corp.'s Motion for Order Approving the Sale of its General Unsecured Proof of Claim Number 000010085 Filed in the Tuesday Morning Corporation's Chapter 11 Bankruptcy to Fair Harbor Capital** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **December 11, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **December 11, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Ori Katz  
Sheppard, Mullin, Richter & Hampton  
Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **December 11, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Email: (*Buyer*)** victor.knox@fairharborcapital.com; Proposals@Fairharborcapital.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**December 11, 2020**

*Date*

**Arthur E. Johnston**

*Printed Name*

**/s/ Arthur E. Johnston**

*Signature*

In re. Meade Instruments Corp.,

Case No 8:19-bk-14714-MW  
Chapter 11 Case

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1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Attorney for Debtor:

**Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com

Office of the United States Trustee:

**Frank Cadigan** frank.cadigan@usdoj.gov

**United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

Attorneys for Creditors Committee:

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unhagey.com; baker@braunhagey.com

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Facsimile: (949) 955-9437

Counsel for Debtors and Debtors-in-Possession.

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**

In re:

☒ MEADE INSTRUMENTS CORP., a  
Delaware corporation,

☐ SUNNY OPTICS, INC., a Delaware  
corporation,

☐ All Debtors.

Debtors and Debtors-in-Possession.

Case No. 8:19-bk-14714-MW  
Jointly administered with  
Case No. 8:19-bk-14711-MW

Chapter 11

MEADE INSTRUMENTS CORP.'S  
MOTION FOR ORDER APPROVING THE  
SALE OF ITS GENERAL UNSECURED  
PROOF OF CLAIM NUMBER 0000010085  
FILED IN THE TUESDAY MORNING  
CORPORATION'S CHAPTER 11  
BANKRUPTCY TO FAIR HARBOR  
CAPITAL; AND DECLARATION OF  
VICTOR ANICETO IN SUPPORT  
THEREOF.

**MOTION AND SUMMARY**

Meade Instruments Corp., a Delaware corporation (the “Debtor”) brings this Motion for an Order Approving the Sale (the “Sale”) of its General Unsecured Proof of Claim Number 0000010085 (the “Proof of Claim”) filed in the Tuesday Morning Corporation’s (“Tuesday Morning”) Chapter 11 Bankruptcy filed in the United States Bankruptcy Court for the Northern District of Texas bearing case number 20-31476 in the amount of \$16,451.00 (the “Claim Amount”) to Fair Harbor Capital (“Fair Harbor”) for a cash payment of \$13,489.82 (the “Purchase Price”).

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I.

**STATEMENT OF FACTS**

**A. Background.**

1. The Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code on December 4, 2019 (the “Chapter 11 Case”).

2. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§134 and 1357.

3. On June 2, 2020, the Debtor filed its General Unsecured Proof of Claim in the Tuesday Morning bankruptcy proceeding seeking payment of \$16,451.00 and was assigned Claim Number 0000010085. See Declaration of Victor Aniceto (the “Aniceto Declaration”) at paragraph 3.

4. On November 19, 2020 the Debtor received an offer from Fair Harbor to purchase the Proof of Claim for the Purchase Price. The Purchase Price is approximately eighty-two percent (82%) of the Claim Amount. See Aniceto Declaration at paragraph 4.

5. The Debtor seeks to sell the Proof of Claim to Fair Harbor for the Purchase Price. A True copy of the Claim Purchase Agreement is attached hereto as **Exhibit A**. (See Aniceto Declaration at Paragraph 2.

6. Due to factors normally attendant to large chapter 11 cases it is unknown when and how much the Debtor will be paid (*or not paid*) upon its Claim. Rather than wait an *undeterminable length of time* for the Tuesday Morning bankruptcy to distribute an *undeterminable amount of funds*, the Debtor agreed to sell the Proof of Claim to Fair Harbor for the Sale Amount. See Aniceto Declaration at paragraph 5.

7. The Purchase Price is fair, reasonable, and in the best interest of the bankruptcy estate and its creditors. See Aniceto Declaration at paragraph 6.

8. The Debtor does not believe that the sale will result in an adverse tax consequence to the bankruptcy estate. See Aniceto Declaration at paragraph 7.

9. The Debtor requests the entry of an order approving the private sale of the Proof of Claim to Fair Harbor for the Sale Amount. See Aniceto Declaration at paragraph 8.

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II.

**BASIS FOR RELIEF**

Section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citations omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the best interest of the estate, and a business justification exists for authorizing the sale. *In re Huntington, Ltd.*, 654 F.2d 578 (9th Cir. 1981); *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. B.A.P. 1988).

The demonstration of a valid business justification by the debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

In determining whether a sale satisfies the business judgment standard, courts have held that: (a) there be a sound business reason for the sale; (b) accurate and reasonable notice of the

1 sale be given to interested persons; (c) the sale yield an adequate price (i.e., one that is fair and  
2 reasonable); and (d) the parties to the sale have acted in good faith. *Titusville Country Club v.*  
3 *Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *see also, In*  
4 *re Walter*, 83 B.R. at 19-20.

5 The Debtor submits that this sale clearly comports with each of these four criteria and the  
6 sale was in the best business judgment of Victor Aniceto the Debtor's President. See Aniceto  
7 Declaration at Paragraph 6.

8 **A. Sound Business Purpose**

9 There must be some articulated business justification, other than appeasement of major  
10 creditors, for using, selling or leasing property out of the ordinary course of business before the  
11 bankruptcy court may order such disposition under Section 363(b). *In re Lionel Corp.*, 722 F.2d at  
12 1070. The Ninth Circuit Bankruptcy Appellate Panel in *Walter v. Sunwest Bank (In re Walter)*, 83  
13 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a flexible case-by-case test to determine whether  
14 the business purpose for a proposed sale justifies disposition of property of the estate under  
15 Section 363(b). In *Walter*, the Bankruptcy Appellate Panel, adopting the reasoning of the Fifth  
16 Circuit in *In re Continental Airlines, Inc.*, 780 F.2d 1223 (5th Cir. 1986) and the Second Circuit in  
17 *In re Lionel Corp.*, *supra*, articulated the standard to be applied under Section 363(b) as follows:

18 Whether the proffered business justification is sufficient depends on  
19 the case. As the Second Circuit held in *Lionel*, the bankruptcy judge  
20 should consider all salient factors pertaining to the proceeding and,  
21 accordingly, act to further the diverse interests of the Debtor,  
22 creditors and equity holders, alike. He might, for example, look to  
23 such relevant facts as the proportionate value of the asset to the  
24 estate as a whole, the amount of elapsed time since the filing, the  
25 likelihood that a plan of reorganization will be proposed and  
26 confirmed in the near future, the effect of the proposed disposition  
27 on future plans of reorganization, the proceeds to be obtained from  
28 the disposition vis-a-vis any appraisals of the property, which of the  
alternatives of use, sale or lease the proposal envisions and, most  
importantly perhaps, whether the asset is increasing or decreasing in  
value. This list is not intended to be exclusive, but merely to provide  
guidance to the bankruptcy judge.

26 *In Re Walter*, 83 B.R. at 19-20, citing *In re Continental Air Lines, Inc.*, 780 F.2d 1223,  
27 1226 (5th Cir. 1986).

28 ///

**A. Accurate and Reasonable Notice**

In connection with a proposed sale under Section 363 of the Bankruptcy Code, "four pieces of information must be presented to the creditors. The notice should: place all parties on notice that the debtor is selling its business; disclose accurately the full terms of the sale; explain the effect of the sale as terminating the debtor's ability to continue in business; and explain why the proposed price is reasonable and why the sale is in the best interest of the estate." *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 180 (D. Del. 1991). A notice is sufficient if it includes the terms and conditions of the sale and if it states the time for filing objections. *In re Karpe*, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an opportunity for objections and hearing before the court if there are objections. *Id.*

**B. Fair and Reasonable Price**

In order to be approved under Section 363(b) of the Bankruptcy Code, the purchase price must be fair and reasonable. *Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re Coastal Indus., Inc.)*, 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). Several courts have held that "fair value" is given for property in a bankruptcy sale when at least 75% of the appraised value of such property is paid. *See In re Karpe*, 84 B.R. at 933; *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986); *Willemain v. Kivitz*, 764 F.2d 1019 (4th Cir. 1985); *In re Snyder*, 74 B.R. 872, 878 (Bankr. E.D. Pa. 1987); *In re The Seychelles, Partnership and Genius Corp. v. Banyan Corp.*, 32 B.R. 708 (N.D. Tex. 1983). However, the Debtor also realizes that "[its] main responsibility, and the primary concern of the bankruptcy court, is the maximization of the value of the asset sold." *In re Integrated Resources, Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), *all'* *d*, 147 B.R. 650 (S.D.N.Y. 1992). "It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [debtor's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); *see also In re Wilde Horse Enterprises*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) ("In any sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold"). The Debtor is informed and believes that under the

1 circumstances this is the highest and best price for the Assets and that the Sale Price is equal to the  
2 current fair market value of the Proof of Claim.

3 **C. Good Faith**

4 When a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is  
5 required to make a finding with respect to the "good faith" of Purchaser. *In re Abbotts Dairies*,  
6 788 F.2d at 149. Such a procedure ensures that Section 363(b)(1) will not be employed to  
7 circumvent the creditor protections of Chapter 11, and as such, it mirrors the requirement of  
8 Section 1129, that the Bankruptcy Court independently scrutinizes the debtor's reorganization plan  
9 and makes a finding that it has been proposed in good faith. *Id.* at 150.

10 "Good faith" encompasses fair value, and further speaks to the integrity of the transaction.  
11 *In re Wilde Horse Enterprises*, 136 B.R. at 842. With respect to the debtor's conduct in  
12 conjunction with the sale, the good faith requirement "focuses principally on the element of  
13 special treatment of the Debtor's insiders in the sale transaction." *See In re Industrial Valley*  
14 *Refrig. and Air Cond. Supplies, Inc.*, 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). With respect to the  
15 buyer's conduct, this Court should consider whether there is any evidence of "fraud, collusion  
16 between the purchaser and other bidders or the [debtor], or an attempt to take grossly unfair  
17 advantage of other bidders." *In re Abbotts Dairies*, 788 F.2d at 147; *In re Rock Indus. Mach.*  
18 *Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978); *In re Wilde Horse Enterprises*, 136 B.R. at 842; *In re*  
19 *Alpha Industries, Inc.*, 84 B.R. 703, 706 (Bankr. D. Mont. 1988). In short, "[1]ack of good faith is  
20 generally determined by fraudulent conduct during the sale proceedings." *In re Apex Oil Co.*, 92  
21 B.R. 847, 869 (Bankr. E.D. Mo. 1988), citing *In re Exennium, Inc.*, 715 F.2d 1401, 1404-05 (9th  
22 Cir. 1983). *See also In re M Capital Corp.*, 290 B.R. 743 (B.A.P. 9th Circuit, 2003).

23 10. Here, Fair Harbor is a third party with no relationship to the Debtor, or any creditor  
24 of this bankruptcy estate. The offer to purchase from Fair Harbor is in the best interest in the  
25 estate. Due to factors normally attendant to large chapter 11 cases such as the Tuesday Morning  
26 bankruptcy, it is unknown when and how much the Debtor will be paid (*or not paid*) upon its  
27 Claim. Rather than wait an *undeterminable length of time* for the Tuesday Morning bankruptcy to  
28 distribute an *undeterminable amount of funds*, the Debtor agreed to sell the Proof of Claim to Fair



Harbor for the Sale Amount. Accordingly, the Court should find that Contrarian is a good faith purchaser pursuant to 11 U.S.C. § 363(m).

**III.**

**WAIVER OF STAY UNDER BANKRUPTCY CODE RULES 6004(h) and 6006(d)**

Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Absent any objection to the Motion, the Debtor requests that the 14-day stay be waived so that the parties may quickly close the sale.

**IV.**

**NOTICE**

Pursuant to the Order Limiting Notice of Certain Matters Requiring Notice Pursuant to FRBP 2002 and 9007 (Docket No 62). Notice of this Motion has been provided to: (1) the Office of the United States Trustee for the Central District of California; (2) counsel for the Committee of Unsecured Creditors; (3) all secured creditors or their counsel; and (4) all parties who file and serve requests for special notice in this case, as of the service date.

**CONCLUSION**

WHEREFORE, the Debtor requests the entry of an Order, granting the relief requested herein and such other and further relief as is just and proper.

**GOE FORSYTHE & HODGES LLP**

Dated: December 10, 2020

By: /s/ Robert P. Goe  
Robert P. Goe  
Attorneys for Meade Instruments Corp.,  
Debtor and Debtor-in-Possession

**DECLARATION OF VICTOR ANICETO**

I Victor Aniceto, declare as follows:

1. I am the President of Meade Instruments Corp, a Delaware corporation, the Debtor and Debtor-in-Possession herein. The matters stated hereinafter are within my own personal knowledge and, if called as a witness, I could and would competently testify thereto.

2. This declaration is filed in support of the Debtor's Motion for an Order Approving the Sale of its General Unsecured Proof of Claim Number 0000010085 (the "Proof of Claim") filed in the Tuesday Morning Corporation's ("Tuesday Morning") Chapter 11 Bankruptcy filed in the United States Bankruptcy Court for the Northern District of Texas bearing case number 20-31476 in the amount of \$16,451.00 (the "Claim Amount") to Fair Harbor Capital ("Fair Harbor") for a cash payment of \$13,489.82 (the "Purchase Price"). A true copy of the Claim Purchase Agreement is attached to hereto as **Exhibit A**.

3. On June 2, 2020, the Debtor filed its General Unsecured Proof of Claim in the Tuesday Morning bankruptcy proceeding seeking payment of \$16,451.00 and was assigned claim number 0000010085.

4. On November 19, 2020 the Debtor received an offer from Fair Harbor to purchase the Proof of Claim for the Purchase Price. The Purchase Price is approximately eighty-two percent (82%) of the Claim Amount.

5. Due to factors normally attendant to large chapter 11 cases it is unknown when and how much the Debtor will be paid (*or not paid*) upon its Claim. Rather than wait an *undeterminable length of time* for the Tuesday Morning bankruptcy to distribute an *undeterminable amount of funds*, the Debtor agreed to sell the Proof of Claim to Fair Harbor for the Sale Amount.

6. In my best business judgment, the Purchase Price is fair, reasonable, and in the best interest of the bankruptcy estate and its creditors.

7. The Debtor does not believe that the sale will result in an adverse tax consequence to the bankruptcy estate.

///

1           8.       The Debtor requests the entry of an order approving the private sale of the Proof of  
2 Claim to Fair Harbor for the Sale Amount.

3           I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct. This Declaration was executed on this 10th day of December 2020  
5 at Irvine Ana, California.



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6 Victor Aniceto, President  
7 Meade Instruments Corp., a Delaware  
8 corporation.  
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# EXHIBIT A

**Assignment of Claim.** MEADE INSTRUMENTS CORP (hereinafter "Seller") with a principal address of 27 HUBBLE IRVINE CA 92618, for good and valuable consideration in the sum of **\$13,489.82** (the "Purchase Price"), does hereby absolutely and unconditionally sell, convey, and transfer to Fair Harbor Capital, LLC. and any of its successors, assigns or designees (hereinafter "Purchaser") all of Seller's right, title, benefit and interest in and to any and all of Seller's pre-petition claim or claims, as more specifically set forth as any right to payment (the "Claim"), against **Tuesday Morning Corporation, et al.** ("the "Debtor"), in bankruptcy proceedings in the **United States Bankruptcy Court for the Northern District of Texas** (the "Court"), **Case No. 20-31476** (the "Case"); and includes any Proof of Claim (defined below), along with voting and any other rights and benefits which may now exist, or come into existence in regards the Claim, all cash, securities, instruments and other property, to be paid or issued by Debtor or any other party, directly or indirectly, in connection with or satisfaction of the Claim, including without limitation "cure" amounts related to the assumption of an executory contract and any rights to receive all payments in respect thereof, and all rights to receive interest, penalties, fees, and any damages from any cause of action, litigation or rights of any nature against Debtor, its affiliates, any guarantor or other third party, which may be paid or issued with respect to and/or in satisfaction of the Claim (the "Recovery"). In the event that any Recovery related to the claim is made payable or addressed to the Seller, Seller hereby authorizes Purchaser to deposit such Recovery into Purchaser's bank as if such Recovery was made payable or in the name of the Purchaser. This Claim Purchase Agreement (the "Agreement") shall be deemed an unconditional purchase of the Claim for the purpose of collection and shall not be deemed to create a security interest. Seller represents the Claim is in the amount not less than **\$16,451.00**(the "Claim Amount").

**Proof of Claim.** Seller represents and warrants that (check one)

- ☐ (i) a proof of claim in the amount of \_\_\_\_\_ (the "Proof of Claim Amount") has been duly and timely filed in the Case; or
- ☐ (ii) no proof of claim has been filed. For the avoidance of doubt, the term "Proof of Claim" shall include, unless expressly agreed to otherwise, (a) any and all multiple Proofs of Claim filed at any time, whether before or after the date of execution of this Agreement, by or on behalf of Seller in respect of the Claim and (b) any and all of Seller's documentation supporting the Claim. The parties agree that if the Proof of Claim Amount is less than the Claim Amount, the Purchase Price shall be reduced such that Seller shall be paid the pro rata share of the Purchase Price based on the lower Proof of Claim Amount.

**Representations; Warranties and Covenants.** Seller represents, warrants and covenants that, (a) Seller owns and has sole title to the Claim free and clear of any and all liens, security interests or encumbrances of any kind or nature whatsoever, including without limitation pursuant to any factoring agreement, and upon the sale of the Claim to Purchaser, Purchaser will receive good title to the Claim; (b) Seller has not previously sold, assigned, transferred, or pledged the Claim, in whole or in part, to any third party; (c) the basis for the Claim is amounts validly due from and owing by the Debtor; (d) the Claim is a valid, undisputed, liquidated, enforceable, and non-contingent claim against the Debtor for which the Debtor has no defenses and no objection to the Claim has been filed or threatened; (e) Seller has not engaged in any acts, conduct or omissions that might result in Purchaser receiving, in respect of the Claim, proportionately less payments or distributions or any less favorable treatment than other similarly situated creditors; (f) Debtor, or any other third party, has no basis to assert the Claim is subject to any defense, claim or right of setoff, reduction, impairment, disallowance, subordination or avoidance, including preference actions, whether on contractual, legal or equitable grounds; (g) that Seller is not "insolvent" within the meaning of Section 1-201 (23) of the Uniform Commercial Code or within the meaning of Section 101 (32) of the Bankruptcy Code; and (h) Seller is not an "insider" of the Debtor, as set forth in the United States Bankruptcy Code § 101(31), or a member of any official or unofficial committee in connection with the Case. Seller acknowledges and unconditionally agrees any misrepresentation or breach by Seller may cause Purchaser irreparable harm and accordingly, Purchaser shall be entitled to all available remedies as may be available to Purchaser for any such misrepresentation, breach or threatened breach, including but not limited to the immediate recovery of money damages ("Restitution") including without limitation a "Restitution Payment", as further defined below.

**Execution of Agreement.** This Agreement shall become effective and valid when (a) Seller executes this Agreement and it is received by Purchaser and (b) the Agreement is executed by a proper representative of Purchaser.

**Consent and Waiver.** Seller hereby acknowledges and consents to all of the terms set forth in this Agreement and hereby waives its right to raise any objections thereto pursuant to Rule 3001 of the Rules of Bankruptcy Procedure.

**Claim or Recovery Impaired or Allowed for an Amount Less than Claim Amount. (For clarity purposes, this paragraph pertains only to the validity of the Claim and not the Recovery against the Claim as ordered by the Court.)** If all or any part of the Claim or Claim Amount is (a) avoided, disallowed, subordinated, reclassified, reduced, objected to, or otherwise impaired, for any reason whatsoever including without limitation a breach of any of the terms or conditions of this Agreement; or (b) the Claim is subsequently scheduled by Debtor or is amended such that all or any portion of the Claim is listed on the Debtor's amended schedule of liabilities as unliquidated, contingent or disputed or in a lesser amount than the Claim Amount (each (a) and (b) a "Disallowance"), then Seller, shall make immediate Restitution and repayment of the proportional Purchase Price equal to the ratio of the amount of the Disallowance divided by the Claim Amount multiplied by the Purchase Price ("Restitution Payment"), no later than 30 days after receiving notice of such Disallowance. Such Restitution Payment shall be made together with interest, calculated at the rate of five (5%) percent per annum, from the date of Seller's execution of this Agreement until the date that such Restitution Payment is received by Purchaser. In the event Seller has previously assigned or pledged this claim to any third party, or in the future purports to assign or pledge the claim to a third party, Seller agrees to immediately pay assignee upon demand of Purchaser, liquidated damages in an amount equal to double the amount paid to Seller hereunder.

**Notices (including Voting Ballots) Received by Seller; Further Cooperation.** Seller agrees to immediately forward to Purchaser any and all notices received from Debtor, the Court or any other court or governmental entity or any third party regarding the Claim assigned herein and to take such other action, with respect to the Claim, as Assignee may request from time to time. More specifically, Seller shall take such further action as may be necessary or desirable to effect the transfer of the Claim and to direct any payments or distributions, or any form of Recovery on account of the Claim to Purchaser, including the execution of appropriate voting ballots, transfer powers and consents at Purchaser's sole discretion.

**Recovery (including Cure Payments) Received or Delayed by Seller.** In the event Seller (i) receives any interim or final distribution of the Recovery, or any portion thereof, made payable on or after the date of Seller's execution of this Agreement; or (ii) delays or impairs Purchaser's right to Recovery for any reason (each (i) and (ii) a "Delayed Recovery Event"), then Seller agrees to (a) accept any Recovery the same as Purchaser's agent and to hold the same in trust on behalf of and for the sole benefit of Purchaser and shall promptly deliver the same forthwith to Purchaser in the same form received, or in a form reasonably requested by Purchaser, free of any withholding, set-off, claim or deduction of any kind and/or (b) settle

or cure the reason for the Delayed Recovery Event (each (a) and (b) a "Settlement") within ten (10) business days of the Delayed Recovery Event (the "Settlement Date"). Seller shall pay Purchaser interest, calculated at the rate of five (5%) percent per annum of any amount or portion of Recovery that incurs a Delayed Recovery Event, for each day after the Settlement Date until such Recovery is received by Purchaser.

**Governing Law, Personal Jurisdiction and Service of Process.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA, notwithstanding any contrary choice of law that would otherwise apply under the choice of law principles of that or any other jurisdiction. Any action arising under or relating to this Agreement must be brought in a State or Federal court located in New York County in the State of New York. Seller consents to and confers personal jurisdiction over Seller by any such court and agrees that Purchaser may validly effect service of process upon Seller by mailing a copy of said process to Seller's address set forth hereof in this Agreement. In any action hereunder Seller waives the right to demand a trial by jury.

**Authorizations.** Seller irrevocably appoints Purchaser as its true and lawful attorney and authorizes Purchaser to act in Seller's stead, to demand, sue for, compromise and recover all amounts as now are, or hereafter may become, due and payable on account of the Claim. Seller grants Purchaser full authority to do all things necessary to enforce the Claim and its rights thereunder. Seller agrees that the powers granted in this paragraph are discretionary in nature and that Purchaser may exercise or decline to exercise such powers at Purchaser's sole option. Purchaser shall have no obligation to prove or defend the Claim.

**Indemnification.** Seller further agrees to reimburse Purchaser for all losses, costs and expenses, including reasonable legal fees at the trial and appellate levels incurred by Purchaser as a result of, in connection with, or related to any (a) Disallowance, (b) Seller's breach of this Agreement, including without limitation any misrepresentation by Seller, and/or (c) litigation arising out of or in connection with this Agreement or in order to enforce any provision of this Agreement.

**Miscellaneous.** Seller agrees that this Agreement and all its terms are confidential and may not be disclosed without the prior written consent of Purchaser. Purchaser shall have the right to all remedies including specific performance and other injunctive and equitable relief without a showing of irreparable harm or injury and without posting a bond. Each party expressly acknowledges and agrees that it is not relying upon, any representations, promises, or statements, except to the extent that the same are expressly set forth in this Agreement, and that each party has the full authority to enter into this Agreement and that the individuals whose signatures appear below hereby expressly represent that they have the authority to bind the party for which they sign this Agreement. The parties hereby mutually agree and stipulate that this Agreement is the result of negotiations between the parties and terms hereof are negotiated terms. Accordingly, any rules of interpretation, construction or resolving ambiguity against the drafter that otherwise apply, shall not apply hereto. This Agreement (i) may not be modified, waived, changed or discharged, in whole or in part, except by an agreement in writing signed by the parties; (ii) constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and (iii) supersedes all prior agreements, understandings and representations pertaining to the subject matter hereof, whether oral or written. Seller hereby acknowledges that Purchaser may at any time resell the Claim, or any portion thereof, together with all right title and interest received by Purchaser in and to this Agreement. Seller shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Purchaser. This Agreement shall be binding upon any prospective successor of Seller (whether by operation of law, merger or otherwise) or on any purchaser of all or substantially all of Seller's assets ("Transfer"). In connection with any such Transfer, the purchaser, successor or assignee of Seller shall be bound by the terms and conditions of this Agreement. All representations and warranties made herein shall survive the execution and delivery of this Agreement and any Transfer. This Agreement may be signed in counterparts and by telecopy, or other commonly acceptable form of electronic transmission, each of which shall be deemed an original and all of which taken together shall constitute the Agreement. Failure or delay on the part of Purchaser to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

#### Notice of Transfer and Waiver of Notice

**MEADE INSTRUMENTS CORP ("Seller")** sells, transfer and assigns unto Fair Harbor Capital, LLC, with and address of PO Box 237037, New York, NY 10023, its successors and assigns ("Purchaser"), pursuant to a Claim Purchase Agreement between Seller and Purchaser (the "Agreement") all of Seller's right, title and interest in, to and under Seller's Claim (as defined in the Agreement) against **Tuesday Morning Corporation, et al.** or any of its co-debtor affiliates (the "Debtor" in the aggregate amount of not less than **\$16,451.00**, representing all claims of Seller pending against Debtor in the United States Bankruptcy Court, Northern District of Texas, Case No 20-31476, . Seller Hereby waives its right to raise any objection and/or receive notice pursuant to Rule 3001 of the Federal Rules of Bankruptcy Procedures and stipulates that an order may be entered recognizing the Agreement as an unconditional sale and the Purchaser as the valid owner of the Claim.

**In Witness Whereof,** MEADE INSTRUMENTS CORP (Seller) and Fair Harbor Capital, LLC (Purchaser) have signed below:

**MEADE INSTRUMENTS CORP ("Seller")**

27 HUBBLE  
IRVINE, CA 92618

Print Name: Victor Aniceto Title: President

Signature:  Date: 12/9/20

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: victor.aniceto @ meade.com (Clearly Please )

Updated Address (If Changed): \_\_\_\_\_

**Fair Harbor Capital, LLC ("Purchaser")**

130 West 57th Street, 5th Floor  
New York, NY 10019

Signature: \_\_\_\_\_

\_\_\_\_\_  
Fred Glass, Member Fair Harbor Capital, LLC

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**18101 Von Karman Avenue, Suite 1200, Irvine, California 92612.**

A true and correct copy of the foregoing document entitled (*specify*): **Notice of Opportunity to Request a Hearing on Motion [LBR 9013-1(o)] and Meade Instruments Corp.'s Motion for Order Approving the Sale of its General Unsecured Proof of Claim Number 000010085 Filed in the Tuesday Morning Corporation's Chapter 11 Bankruptcy to Fair Harbor Capital** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **December 11, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **December 11, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Ori Katz  
Sheppard, Mullin, Richter & Hampton  
Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **December 11, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Via Email: (*Buyer*)** victor.knox@fairharborcapital.com; Proposals@Fairharborcapital.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**December 11, 2020**

**Arthur E. Johnston**

*Date*

*Printed Name*

**/s/ Arthur E. Johnston**

*Signature*

In re. Meade Instruments Corp.,

Case No 8:19-bk-14714-MW  
Chapter 11 Case

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1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Attorney for Debtor:

**Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com

Office of the United States Trustee:

**Frank Cadigan** frank.cadigan@usdoj.gov

**United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov

Attorneys for Creditors Committee:

**Mark S Horoupian** mhoroupian@sulmeyerlaw.com,  
mhoroupian@ecf.inforuptcy.com; ccaldwell@sulmeyerlaw.com

**Claire K Wu** ckwu@sulmeyerlaw.com,  
mviramontes@sulmeyerlaw.com; ckwu@ecf.courtdrive.com; ckwu@ecf.inforuptcy.com

Attorney for Optronic Technologies, Inc., d/b/a Orion Telescopes and Binoculars:

**Matthew Borden** borden@braunhagey.com,  
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com; fisher@braunhagey.com; theodore@braunhagey.com; hasegawa@braunhagey.com; szoke@bra  
unhagey.com; baker@braunhagey.com

**Hamid R Rafatjoo** hrafatjoo@raineslaw.com, bclark@raineslaw.com

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